

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<b>In Re:</b>	§	<b>Chapter 11</b>
	§	
<b>W.R. GRACE &amp; CO., et al.,</b>	§	<b>Jointly Administered</b>
	§	<b>Case No. 01-01139 (JKF)</b>
<b>Debtors.</b>	§	
	§	

**FEE AUDITOR'S FINAL REPORT REGARDING FEE APPLICATION  
OF NELSON MULLINS RILEY & SCARBOROUGH, LLP  
FOR THE SEVENTH INTERIM PERIOD**

This is the final report of Warren H. Smith & Associates, P.C. ("Smith"), acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Seventh Interim Fee Application of Nelson Mullins Riley & Scarborough, LLP (the "Application").

**BACKGROUND**

1. Nelson Mullins Riley & Scarborough, LLP ("Nelson Mullins"), was retained as special litigation and environmental counsel for the Debtors. In the Application, Nelson Mullins seeks approval of fees totaling \$22,038.00 and costs totaling \$289.77 for its services from October 1, 2002 through December 31, 2002.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2001, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. 330, Issued January 30,

1996, (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served on Nelson Mullins an initial report based on our review and received a response from Nelson Mullins, portions of which are quoted herein.

## **DISCUSSION**

### General Issues

3. In our initial report, we noted that the time entries are generally adequately detailed and devoid of lumping.

4. In our initial report, we noted that Nelson Mullins billed \$8,138.00 for preparing its own fee applications. That figure constitutes 36.9% of the total fees requested for the period. We further noted and approved that the firm's lowest-billing professional billed the bulk of the time to this category. However, the percentage remains startlingly high. We asked Nelson Mullins to explain why this percentage is so high and to advise us as to its plans to lower the amount billed to fee application preparation as a percentage of total fees. Nelson Mullins replied as follows:

The work time that is taken to prepare and review fee applications, respond to auditor's reports, and track filings regarding the fee applications are essentially fixed. Since the fees we have been charging are at a low rate relative to other firms, and the fees themselves are now significantly lower, we would, of course, expect that the ratio of the fixed work to the significantly lower billings would necessarily rise, and that the client (and auditor) would actually be *pleased* by that event. Given the above, we completely disagree that the percentage of fee application billings to billings for substantive work performed are "startlingly high", or that they are "high" at all.

The question, correctly phrased, is whether, given that the NMRS fees are so low, is having NMRS undertake the court-ordered fee application and auditing process worthwhile to the client? One remedy would be, given the low fees now regularly billed in this case, to propose to have NMRS's status changed from Special Counsel

to Ordinary Course Professional, if in the client's judgment that would be appropriate, and if such an action is possible.


We appreciate the response, and we believe we understand Nelson Mullins' position. While we take no stance regarding Nelson Mullins' suggestion of becoming an Ordinary Course Professional, we have no objection to these fees.

### **CONCLUSION**

5. Thus, we recommend approval of fees totaling \$22,038.00 and costs totaling \$289.77 for Nelson Mullins' services from October 1, 2002, through December 31, 2002.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**


By:   
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**FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served First Class United States mail to the attached service list on this 25<sup>th</sup> day of April 2003.

  
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Warren H. Smith

**SERVICE LIST**

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